

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #15	CCRB Case #: 201905901	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 07/01/2019 5:15 PM	Location of Incident: [REDACTED]	Precinct: 69	18 Mo. SOL 1/1/2021	EO SOL 8/18/2021	
Date/Time CV Reported Wed, 07/03/2019 12:28 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/03/2019 12:28 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Leonard	22293	962546	069 PCT
2. An officer			
3. POF Abigail Brunner	21094	958338	069 PCT
4. POM David Wu	06465	964845	069 PCT
5. POF Lorraine Figueroa	22906	965095	069 PCT
6. POM Haris Feratovic	18161	958579	069 PCT
7. POM Steven Goldin	06323	949039	069 PCT
8. POM Jack Palleschi	10433	961992	060 PCT
9. POM Patrick Gourlay	00244	951780	069 PCT
10. POM Nico Hewitt	20530	922500	069 PCT
11. POF Ashley Raaf	16294	966791	069 PCT
12. SGT Thomas Rodriguez	00075	947426	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Law	16697	960788	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Leonard	Abuse: Police Officer Patrick Leonard stopped § 87(2)(b)	[REDACTED]
B.POF Abigail Brunner	Abuse: Police Officer Abigail Brunner stopped § 87(2)(b)	[REDACTED]
C.POM Patrick Leonard	Abuse: Police Officer Patrick Leonard strip-searched § 87(2)(b)	[REDACTED]
D.POM Patrick Leonard	Force: Police Officer Patrick Leonard used physical force against § 87(2)(b)	[REDACTED]
E.POM David Wu	Force: Police Officer David Wu used physical force against § 87(2)(b)	[REDACTED]
F.POF Abigail Brunner	Force: Police Officer Abigail Brunner used physical force against § 87(2)(b)	[REDACTED]
G.POM Patrick Gourlay	Force: Police Officer Patrick Gourlay used physical force against § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
H.POM Haris Feratovic	Force: Police Officer Haris Feratovic used physical force against § 87(2)(b)	
I.POM Steven Goldin	Force: Police Officer Steven Goldin used physical force against § 87(2)(b)	
J.POF Ashley Raaf	Force: Police Officer Ashley Raaf used physical force against § 87(2)(b)	
K.POF Lorraine Figueroa	Force: Police Officer Lorraine Figueroa used physical force against § 87(2)(b)	
L.POM Jack Palleschi	Force: Police Officer Jack Palleschi used physical force against § 87(2)(b)	
M.POM Nico Hewitt	Force: Police Officer Nico Hewitt used physical force against § 87(2)(b)	
N.SGT Thomas Rodriguez	Force: Sergeant Thomas Rodriguez used physical force against § 87(2)(b)	
O.POF Abigail Brunner	Abuse: Police Officer Abigail Brunner threatened § 87(2)(b) with the use of force.	
P. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	
Q.SGT Thomas Rodriguez	Abuse: Sergeant Thomas Rodriguez searched § 87(2)(b)	
R.POM Jack Palleschi	Abuse: Police Officer Jack Palleschi searched § 87(2)(b)	
S.SGT Thomas Rodriguez	Discourtesy: Sergeant Thomas Rodriguez acted discourteously toward § 87(2)(b)	
T.POM Jack Palleschi	Discourtesy: Police Officer Jack Palleschi acted discourteously toward § 87(2)(b)	
U.SGT Thomas Rodriguez	Force: Sergeant Thomas Rodriguez used physical force against § 87(2)(b)	
V.POM Jack Palleschi	Force: Police Officer Jack Palleschi used physical force against § 87(2)(b)	

Case Summary

On July 3, 2019, § 87(2)(b) filed this complaint with the CCRB over the telephone.

At approximately 5:15 p.m. on July 1, 2019, § 87(2)(b) knocked on the first-floor window of his home located at § 87(2)(b), Brooklyn, because he had forgotten his cellphone. At the time, § 87(2)(b) brother, § 87(2)(b) his three nieces, and his sister-in-law were in the home. One of § 87(2)(b) nieces gave him his cellphone and he walked down the street.

§ 87(2)(b) a female individual called 9-1-1 and reported a burglary in progress. PO Abigail Brunner and PO Patrick Leonard from the 69th Precinct responded. PO Brunner and PO Leonard approached § 87(2)(b) and stood in front of him (**Allegations A and B: Abuse of Authority** – § 87(2)(g) PO Leonard allegedly placed his hand inside of the front of § 87(2)(b) pants (**Allegation C: Abuse of Authority** – § 87(2)(g) PO Leonard grabbed the back of § 87(2)(b) neck and used his feet to take § 87(2)(b) to the ground (**Allegation D: Force** – § 87(2)(g) PO David Wu, PO Patrick Gourlay, PO Jack Palleschi, PO Lorraine Figueroa, PO Haris Feratovic, PO Steven Goldin, PO Nico Hewitt, PO Ashley Raff, and Sgt. Thomas Rodriguez from the 69th Precinct arrived on scene. In the course of taking § 87(2)(b) into police custody, multiple officers used force against § 87(2)(b) (**Allegations E-N: Force** – § 87(2)(g) PO Brunner removed her Taser and pointed it at § 87(2)(b) (**Allegation O: Abuse of Authority** – § 87(2)(g) A male officer allegedly told § 87(2)(b) “Shut up. Nigger, shut up” (**Allegation P: Offensive Language** – § 87(2)(g) PO Palleschi and Sgt. Rodriguez lifted § 87(2)(b) and walked with him to a patrol vehicle. PO Palleschi and Sgt. Rodriguez searched § 87(2)(b) (**Allegations Q and R: Abuse of Authority** – § 87(2)(g) § 87(2)(b) underwear remained exposed during the search (**Allegations S and T: Discourtesy** – § 87(2)(g) § 87(2)(b) was in the process of sitting in the patrol vehicle and Sgt. Rodriguez allegedly punched § 87(2)(b) in the stomach (**Allegations U and V: Force** – § 87(2)(g) § 87(2)(b) sat in the patrol vehicle and was transported to the 69th Precinct stationhouse. § 87(2)(b) was ultimately arrested for intent to injure a police officer, but his arrest was later voided.

18 BWC videos were obtained from IAB (Board Reviews 01-18).

Allegation (A) Abuse of Authority: Police Officer Patrick Leonard stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Abigail Brunner stopped § 87(2)(b)

It is undisputed that § 87(2)(b) resided at § 87(2)(b) in Brooklyn. § 87(2)(b) was wearing a dark red shirt, red sweatpants, and a baseball cap. At 5:15 p.m. on July 1, 2019, a 9-1-1 call noted that at § 87(2)(b), a heavy-set black male wearing a burgundy shirt and a hat was suspected of breaking into an apartment. The female caller approached the male suspect and asked what he was doing. The male suspect told the female caller to mind her own business. The caller provided her surname, § 87(2)(b). The radio call to the police officers informed the officers of a burglary in progress and provided the physical description of the subject (Board Review 19). The 911 EVENT Information (Board Review 34), noted the caller’s surname as “§ 87(2)(b)” and provided a call back number.

§ 87(2)(b) stated (Board Review 21) that upon realizing he forgot his cellphone and bus pass, he returned home and knocked on the window for his niece to pass him his phone. Two male individuals were sitting in a vehicle watching § 87(2)(b) recognized the two male individuals as neighbors, but he did not know their names or their addresses. A female individual, who § 87(2)(b) recognized as the wife of one of the two male individuals, was walking up the street toward § 87(2)(b) but he did not know her name or her address. The female individual

stopped at the gate in front of § 87(2)(b) house. The female individual asked § 87(2)(b) who he was and what he wanted. § 87(2)(b) made a gesture toward the female with one hand as to wave her away. The female individual asked § 87(2)(b) who he was. § 87(2)(b) ignored her. § 87(2)(b) obtained his cellphone and walked toward the bus stop. On the street, the female and two male individuals were standing beside the vehicle. The female and two male individuals asked him what he was doing in the area. § 87(2)(b) replied that he lived in the area and he was their neighbor. The female individual entered the vehicle and made a phone call. PO Leonard and PO Brunner arrived on scene and approached § 87(2)(b). PO Leonard and PO Brunner told § 87(2)(b) to not move and that he was being arrested. Neither PO Leonard nor PO Brunner informed § 87(2)(b) why he was being placed under arrest.

PO Leonard and PO Brunner stated (Board Reviews 22 and 26) that they responded to a call for a burglary in progress. The call provided a physical description of the subject. Upon arrival on scene, § 87(2)(b) was standing beside a stopped vehicle. § 87(2)(b) matched the physical description of the subject of the burglary call. PO Brunner and PO Leonard believed that § 87(2)(b) was going to get into the vehicle. Both PO Leonard and PO Brunner instructed § 87(2)(b) to stop. Both PO Leonard and PO Brunner stopped § 87(2)(b) because he was at the location of the call and matched the description of the individual in the 9-1-1 call.

Starting at internal timestamp 5:17:21 p.m. in PO Brunner's and PO Leonard's BWC videos (Board Reviews 01 and 02), there are street parked vehicles and one stopped white sedan in the traffic lane. § 87(2)(b) is standing approximately three to four feet away from the front passenger door. A male in a grey shirt is standing beside the rear passenger door, a female individual is seated in the front passenger seat, and a male individual is seated in the driver seat. PO Leonard asks § 87(2)(b) to step away from the stopped vehicle and in front of a street parked blue SUV. § 87(2)(b) stepped in front of the blue vehicle and PO Leonard stood in front of § 87(2)(b). PO Brunner stood to the left side of § 87(2)(b).

Based on the information on the 9-1-1 call and § 87(2)(b) statement that a female individual approached him outside of his home and asked him what he was doing, it was determined that the 9-1-1 caller was the female neighbor who approached § 87(2)(b) at his home, and that § 87(2)(b) was the alleged burglary suspect and not another individual. The female caller provided her surname to the 9-1-1 operator and was a known individual to the NYPD. The investigation weighed the statements and the video evidence. It was determined that at no point during the beginning of the incident did either PO Leonard and PO Brunner tell § 87(2)(b) to stop. But, by standing in front of and beside § 87(2)(b) after asking him to stand in front of a parked vehicle, both PO Leonard and PO Brunner prevented § 87(2)(b) from walking away.

According to NYPD Patrol Guide, Section 212-11 (Board Review 32), a stop is considered any encounter between an officer and a civilian in which a reasonable person would not feel free to disregard the officer and walk away. A stop may be conducted only when an officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony.

According to People v. Herold, 282 A.D.2d 1 (Board Review 33), in order to have reasonable suspicion to stop an individual based on a description, the individual must closely match the description and be in close temporal and spacial proximity to the crime.

According to People v. Watts, 43 A.D.3d256 (Board Review 35), a forcible investigatory stop and detention is justified where there is reasonable suspicion that a person has committed or is about to commit a crime. When a police officer confronts an individual whom is reasonably suspected to

have committed an inherently dangerous crime such as burglary, that suspicion alone justifies not only detention but also a frisk for weapons.

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Patrick Leonard strip-searched § 87(2)(b)

Allegation (S) Discourtesy: Sergeant Thomas Rodriguez acted discourteously toward § 87(2)(b)

Allegation (T) Discourtesy: Police Officer Jack Palleschi acted discourteously toward § 87(2)(b)

It is undisputed that § 87(2)(b) was wearing red track pants with two front pockets and two rear pockets. PO Leonard one of the two first officers on scene and was the only male. Sgt. Rodriguez was the only supervisor on scene during the incident.

§ 87(2)(b) stated (Board Review 21) that PO Leonard informed § 87(2)(b) he was going to be searched. PO Leonard placed his hands inside of § 87(2)(b) two front pockets and two rear pockets. PO Leonard removed the 160 dollars from one of § 87(2)(b) pants pockets. PO Leonard grabbed the front waist band of § 87(2)(b) track pants and briefs, pulled the band away from the front of § 87(2)(b) body, and placed his hand down the front of § 87(2)(b) briefs. PO Leonard placed his hand between § 87(2)(b) skin and briefs and made contact with § 87(2)(b) genitals. PO Leonard brought his hand up immediately. The search and strip search allegedly performed by PO Leonard occurred prior to being placed in handcuffs or the physical incident later. At no point during his statement does § 87(2)(b) mention a moment during which his underwear was exposed.

At internal timestamp 5:17:53 p.m. in PO Brunner's BWC video (Board Review 01) PO Leonard reaches both of his hands to § 87(2)(b) waist area and moves his hands around § 87(2)(b) waist band area.

At internal timestamp 5:19:50 p.m. in PO Leonard's BWC video (Board Review 14), § 87(2)(b) is facing a parked patrol vehicle and the front of his body is pressed against the vehicle. PO Palleschi is on § 87(2)(b) right side, and Sgt. Rodriguez is on his left. PO Leonard moves to stand in front of the patrol vehicle and to the right of PO Palleschi so that the front of § 87(2)(b) body is visible. As a result of the physical struggle prior to being pressed against the vehicle, § 87(2)(b) pants are below his waist and his underwear is visible. PO Palleschi and Sgt. Rodriguez search § 87(2)(b) and place their hands in both § 87(2)(b) front and rear pockets. PO Palleschi places a hand inside of § 87(2)(b) front pocket and it pulls down § 87(2)(b) pants

further. PO Palleschi grabs the waist band near the rear of § 87(2)(b) pants and pulls § 87(2)(b) pants up. PO Palleschi places his hand in § 87(2)(b) rear pocket and it pulls § 87(2)(b) pants down. PO Palleschi touches § 87(2)(b) down the back his right leg and up the front of his leg. PO Palleschi touches the front of § 87(2)(b) hip and waist area above his clothing.

At internal timestamp 5:20:00 p.m. in PO Wu's BWC video (Board Review 04), he walks to the left side of Sgt. Rodriguez. Sgt. Rodriguez touches the rear of § 87(2)(b) pants, but his hand is not observed entering one of § 87(2)(b) pants pockets. Sgt. Rodriguez touches the back of § 87(2)(b) pants toward his feet.

PO Leonard stated (Board Review 22) that upon approaching § 87(2)(b) and speaking with him at the front of the vehicle, he did not make any physical contact with § 87(2)(b) body. After the physical interaction with § 87(2)(b) and the other officers who later responded, § 87(2)(b) was placed in handcuffs. § 87(2)(b) was searched prior to being placed in a patrol vehicle. PO Leonard did not have an independent recollection of who searched § 87(2)(b) PO Leonard denied § 87(2)(b) was searched prior to being placed in handcuffs. PO Leonard did not observe an officer pull on the front of § 87(2)(b) track pants, place their hand between his skin and boxers. PO Leonard denied he did so. PO Leonard did not recall § 87(2)(b) complain about having been searched in that manner.

Sgt. Rodriguez stated (Board Review 23) that during the physical incident on the ground he grabbed § 87(2)(b) left hand with both of his hands, and his knee made contact with § 87(2)(b) lower back. He did not touch § 87(2)(b) anywhere else on his body. He and PO Palleschi searched § 87(2)(b) from his shoulders to his ankles for weapons prior to being placed in the patrol vehicle. Sgt. Rodriguez did not recall whether he placed his hands inside § 87(2)(b) pants pockets. Sgt. Rodriguez did not recall where PO Palleschi touched § 87(2)(b) Sgt. Rodriguez was not aware of any other searches having been performed on § 87(2)(b) Sgt. Rodriguez denied any strip-search was conducted on scene.

PO Palleschi stated (Board Reviews 24) that while placing § 87(2)(b) in handcuffs he made contact with § 87(2)(b) right arm. PO Palleschi did not recall where the other officers present made contact with § 87(2)(b) body. PO Palleschi did not recall the front of § 87(2)(b) track pants being pulled away from the front of his body and denied he had done so. PO Palleschi did not recall any officer placing their hand down the front of § 87(2)(b) pants against his skin and denied he had done so. PO Palleschi denied he performed a strip search on § 87(2)(b) and denied any strip search was performed while present.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (D) Force: Police Officer Patrick Leonard used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer David Wu used physical force against § 87(2)(b)

Allegation (F) Force: Police Officer Abigail Brunner used physical force against § 87(2)(b)

Allegation (G) Force: Police Officer Patrick Gourlay used physical force against § 87(2)(b)

Allegation (H) Force: Police Officer Haris Feratovic used physical force against § 87(2)(b)

Allegation (I) Force: Police Officer Steven Goldin used physical force against § 87(2)(b)

Allegation (J) Force: Police Officer Ashley Raaf used physical force against § 87(2)(b)

Allegation (K) Force: Police Officer Lorraine Figueroa used physical force against § 87(2)(b)

Allegation (L) Force: Police Officer Jack Palleschi used physical force against § 87(2)(b)

Allegation (M) Force: Police Officer Nico Hewitt used physical force against § 87(2)(b)

Allegation (N) Force: Sergeant Thomas Rodriguez used physical force against § 87(2)(b)

It is undisputed that a 9-1-1 call was placed, and an individual matching § 87(2)(b) description was the suspect of a burglary in progress. In the course of placing § 87(2)(b) into police custody, there was a physical struggle and § 87(2)(b) was taken to the ground.

Starting at internal timestamp 5:17:35 p.m. in PO Brunner's and PO Leonard's BWC videos (Board Reviews 01 and 02), § 87(2)(b) faces PO Leonard while PO Brunner stands to § 87(2)(b)'s left. PO Brunner informs § 87(2)(b) that they received a call. PO Leonard asks § 87(2)(b) multiple times to face the parked vehicle and § 87(2)(b) remains facing PO Leonard. PO Leonard instructs § 87(2)(b) to face the vehicle but he does not move and crosses his arms across his chest. PO Brunner tells § 87(2)(b) he needs to cooperate. PO Leonard grabs § 87(2)(b) right elbow and § 87(2)(b) pulls his right arm away from PO Leonard. PO Brunner tells § 87(2)(b) that if he does not cooperate, they will handcuff him. At internal timestamp 5:18:04 p.m., PO Leonard grabs § 87(2)(b)'s right arm with both of his hands. § 87(2)(b) says, "No, you can't," and PO Brunner grabs his left wrist. PO Leonard attempts to place § 87(2)(b) right arm behind his back and § 87(2)(b) pulls it forward toward his chest. Starting at internal timestamp 5:18:03 p.m. in PO Figueroa's BWC (Board Review 03) § 87(2)(b) is on his feet, PO Leonard is to his right, PO Brunner is to his left, and PO Wu is behind him. PO Brunner has § 87(2)(b)'s left arm and PO Leonard has his right. § 87(2)(b) is moving his arms up and down. PO Leonard's left knee comes up and behind § 87(2)(b) right leg. § 87(2)(b) falls to his back. Multiple officers instruct § 87(2)(b) to roll onto his stomach. Multiple hands are seen grabbing § 87(2)(b) arms and pulling him up to a seated position. Officers grab his legs and turn him over onto his stomach. Multiple officers surround § 87(2)(b). At internal timestamp 5:18:59 p.m. in PO Steven Goldin's

BWC video (Board Review 06) multiple officers are kneeling on the ground with hands holding § 87(2)(b) arms to his lower back. Sgt. Rodriguez has his knee on the lower left side of § 87(2)(b) back. Handcuffs are applied to § 87(2)(b)

§ 87(2)(b) stated (Board Review 21) that upon approaching him, PO Leonard informed § 87(2)(b) they were at the location to arrest him. PO Brunner and PO Leonard instructed § 87(2)(b) to place his hands behind his back and to turn around. § 87(2)(b) complied and placed his hands behind his back. PO Leonard and PO Brunner placed § 87(2)(b) in handcuffs. PO Wu, PO Gourlay, PO Palleschi, PO Figueroa, PO Feratovic, PO Goldin, PO Hewitt, PO Raff, and Sgt. Rodriguez arrived. PO Wu approached § 87(2)(b) from behind his back and swept his feet underneath him. § 87(2)(b) fell face down onto the ground. Because he was faced down, § 87(2)(b) was not able to see above him and was not able to provide details regarding which officers made contact with his body. He felt more than one foot on his lower and upper back as well as the back of his head. § 87(2)(b) was not able to provide any details regarding why he believed that the officers were making contact with their feet. § 87(2)(b) felt a kick to his ribs and mouth. § 87(2)(b) was turned onto his back. § 87(2)(b) moved his body side to side but did not move his legs. PO Brunner placed both of her knees on § 87(2)(b) chest. Officers lifted § 87(2)(b) to his feet. § 87(2)(b) had abrasions to his elbows and knees. His top and bottom lips had a laceration. § 87(2)(b) went to a clinic regarding his injuries, but he did not know what day or where he went.

§ 87(2)(b) stated in a telephone interview (Board Review 25) that he exited the home and remained standing in the gated front area. Although he did not know it was § 87(2)(b) as the time, § 87(2)(b) was face down on the ground. Two officers were laying across § 87(2)(b) body and an officer had his foot placed on § 87(2)(b) back. § 87(2)(b) was not able to provide any physical descriptions of the officers.

PO Leonard stated (Board Review 22) that he instructed § 87(2)(b) to turn around so that he could be frisked. PO Leonard explained that he wanted to frisk § 87(2)(b) for any possible weapons because there was a general safety concern due to the 9-1-1 call having been about a burglary. After § 87(2)(b) refused to turn around and comply with police orders, PO Brunner informed him that he would be placed in handcuffs. PO Brunner reached toward § 87(2)(b) left arm and § 87(2)(b) pulled his arm away from PO Brunner. PO Leonard grabbed § 87(2)(b) arm and he tensed up his body. PO Leonard, due to training and experience, believed § 87(2)(b) could possibly run away and made the decision take down § 87(2)(b) to prevent him from leaving or hurting anyone. PO Leonard did not recall who the additional officers to arrive were. They assisted in turning § 87(2)(b) onto his back and placing him in handcuffs. PO Leonard denied he or any officer kicked § 87(2)(b) in the mouth, or at all during the incident.

PO Brunner stated (Board Review 26) that after § 87(2)(b) refused to comply with police orders, § 87(2)(b) raised his shoulders and tensed the muscles in his arms as if he was ready for either “flight or fight.” From PO Brunner’s experience, § 87(2)(b) was acting in a manner that indicated he was preparing to fight. PO Brunner did not recall whether § 87(2)(b) was face up or down as a result of the tactical take down. While officers were attempting to grab § 87(2)(b) hands to place them in handcuffs, § 87(2)(b) was pulling them away from the officers. PO Brunner and other officers on scene instructed § 87(2)(b) to give his hands to the officers. PO Brunner did not recall how many times § 87(2)(b) was instructed. PO Brunner grabbed ahold of one of § 87(2)(b) legs. PO Brunner did not recall if any officer was making contact with his back or whether any officers had their knee on § 87(2)(b) back.

PO Palleschi and Sgt. Rodriguez stated (Board Reviews 23 and 24) that they received a job

regarding a burglary at § 87(2)(b) and responded to the location. Upon their arrival, multiple officers were on the ground with § 87(2)(b) in front of the incident location. Due to the information on the call and the location of where the officers were on the ground with § 87(2)(b) PO Palleschi and Sgt. Rodriguez believed the physical struggle to be related to the burglary. PO Palleschi and Sgt. Rodriguez approached to assist in placing handcuffs on § 87(2)(b).

Sgt. Rodriguez stated (Board Review 23) that because § 87(2)(b) matched the description of the suspect § 87(2)(b) was under arrest upon his arrival on scene. Sgt. Rodriguez approached § 87(2)(b) left side, grabbed his left hand and arm with his hands, and placed a knee on § 87(2)(b) lower back. As Sgt. Rodriguez and the other officers were attempting to place § 87(2)(b) hands behind his back, he pulled his arms away from the officers and placed them under his chest. Sgt. Rodriguez pulled the § 87(2)(b) left arm to his back. Other than the force used against § 87(2)(b) lower back and left arm to get him to comply, Sgt. Rodriguez did not use any additional force. Sgt. Rodriguez did not see any other officer place their knees on § 87(2)(b) back. Sgt. Rodriguez denied any officer had their knee on the back of § 87(2)(b) neck. Sgt. Rodriguez denied any officer on scene repeatedly stomped on the § 87(2)(b) back. Sgt. Rodriguez denied he kicked § 87(2)(b) or that he saw any other officer do so. Sgt. Rodriguez denied that he kicked § 87(2)(b) in the mouth and did not see any other officer do so.

PO Palleschi stated (Board Review 24) that other than his arms, PO Palleschi did not have any recollection of officers making contact with other parts of § 87(2)(b) body. PO Palleschi did not use any additional means of force on the individual nor did any other officer on scene. PO Palleschi did not recall any officer placing their knee on the back of § 87(2)(b) neck and denied he had done so. PO Palleschi did not recall any officer using their feet against § 87(2)(b) PO Palleschi denied he or any officer on scene stomped on § 87(2)(b) back. PO Palleschi was not aware of any officer making contact with § 87(2)(b) mouth with their foot and denied he had kicked § 87(2)(b) on the mouth.

Medical records noted that on July 5, 2019, § 87(2)(b) went to a clinic. X-rays were taken of both his knees which did not detect any fractures. The assessment concluded that § 87(2)(b) suffered from contusions and abrasions to both knees, and abrasions to his right arm (see privileged documents).

Based on the BWC videos, the investigation determined that § 87(2)(b) was mistaken in the order of events and he was not handcuffed prior to being placed on the ground. PO Leonard “intended” to frisk § 87(2)(b) and asked him to turn around to do so. § 87(2)(b) pulled away from PO Leonard and PO Brunner when they first made contact with his arms. It was determined that PO Leonard was the officer who conducted the takedown. § 87(2)(b) pulled his arms away from the officers and placed them against his chest. From the various BWC videos which provided multiple angles from which areas of § 87(2)(b) body were viewed, it was determined that while on his stomach, no officers made contact with either § 87(2)(b) back or head with their feet. § 87(2)(b) was not kicked in the mouth or in the ribs by an officer.

According to People v. Watts, 43 A.D.3d256 (Board Review 35), a forcible investigatory stop and detention is justified where there is reasonable suspicion that a person has committed or is about to commit a crime. When a police officer confronts an individual whom is reasonably suspected to have committed an inherently dangerous crime such as burglary, that suspicion alone justifies not only detention but also a frisk for weapons.

According to NYPD Patrol Guide, Section 221-02 (Board Review 27), when an officer must gain compliance or control of an uncooperative subject, they should take the necessary action to protect

personal safety. No more than the reasonable force necessary should be applied to gain control.

§ 87(2)(b), § 87(2)(g)

Allegation (O) Abuse of Authority: Police Officer Abigail Brunner threatened § 87(2)(b) with the use of her Taser.

Starting at 5:18:16 p.m. in PO Figueroa's BWC (Board Review 03) § 87(2)(b) is on the ground face up, and PO Brunner, PO Leonard, PO Wu and PO Figueroa are attempting to grab ahold of § 87(2)(b) hands. PO Brunner is on her feet, leaning over § 87(2)(b) is pulling his arms away from the officers and says, "No, don't cuff me." PO Brunner says, "No problem. Is this what you want to do?" From internal timestamp 5:18:17 p.m. until 5:17:24 p.m. a yellow Taser appears at the top of the screen and a red dot appears on § 87(2)(b) chest. § 87(2)(b) is rolled onto his stomach.

§ 87(2)(b) stated (Board Review 21) that while on the ground on his back, PO Brunner placed both of her knees on his chest and pointed her Taser at him. She placed it two to three inches from the middle of his face.

PO Brunner and PO Leonard stated (Board Reviews 22 and 26) that they had no independent recollection of PO Brunner or any other officer having pulled out a Taser during the incident. PO Brunner denied that she placed her knees on § 87(2)(b) chest and pointed her Taser at § 87(2)(b) face. PO Brunner did not know whether § 87(2)(b) could have been Tased. PO Brunner and PO Leonard were shown BWC videos, but it did not refresh their recollection.

§ 87(2)(b), § 87(2)(g)

According to NYPD Patrol Guide, section 221-08 (Board Review 28) an officer must assess the situation and determine whether the use of a conducted electrical weapon (CEW) would be appropriate. The officer is to considering the totality of the circumstances when deciding the reasonable amount of force necessary to overcome resistance when effecting an arrest, including: actions taken by the subject; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; and whether the subject is actively resisting custody.

§ 87(2)(b), § 87(2)(g)

Allegation (P) Offensive Language: An officer made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) stated (Board Review 21) that while he was face down on the ground a male officer said, “Shut up. Nigger, shut up.” Because he was faced down, § 87(2)(b) did not see which male officer said it, nor did he recognize the voice who said it.

Upon review of the 18 BWC videos (Board Reviews 01-18) which capture the entire incident with § 87(2)(b) at no point was the word “nigger” used.

Sgt. Thomas, PO Palleschi, PO Brunner, and PO Leonard stated (Board Reviews 22-24 and 26) that at no point during the incident did they say, or hear any other officer say, “Shut up. Nigger, shut up,” or use the word “nigger.”

§ 87(2)(b), § 87(2)(g)

Allegation (Q) Abuse of Authority: Sergeant Thomas Rodriguez searched § 87(2)(b)

Allegation (R) Abuse of Authority: Police Officer Jack Palleschi searched § 87(2)(b)

During his statement, § 87(2)(b) alleged that the only search of his person was conducted by the first male officer on scene, PO Leonard, and it was discussed in the Allegation C section of this report. During the course of the investigation, evidence from the BWC videos captured a search performed by Sgt. Rodriguez and PO Palleschi. § 87(2)(b) did not provide any information regarding this search.

At 5:15 p.m. on July 1, 2019, a 9-1-1 call noted that at § 87(2)(b), a heavy-set black male wearing a burgundy shirt and a hat was suspected of breaking into an apartment. The female caller approached the male suspect and asked what he was doing. The male suspect told the female caller to mind her own business. The caller provided her surname, Maxine. The radio call to the police officers informed the officers of a burglary in progress and provided the physical description of the subject (Board Review 19). The 911 EVENT Information (Board Review 34), noted the caller’s surname as “Mixime” and provided a call back number.

At internal timestamp 5:19:50 p.m. in PO Leonard’s BWC video (Board Review 14), § 87(2)(b) is facing a parked patrol vehicle and the front of his body is pressed against the vehicle. PO Palleschi is on § 87(2)(b) right side, and Sgt. Rodriguez is on his left. PO Leonard moves to stand in front of the patrol vehicle and to the right of PO Palleschi so that the front of § 87(2)(b) body is visible. PO Palleschi and Sgt. Rodriguez search § 87(2)(b) and place their hands in both § 87(2)(b) front and rear pockets. PO Palleschi places a hand inside of § 87(2)(b) front

pocket. PO Palleschi places his hand in § 87(2)(b) rear pocket. PO Palleschi touches § 87(2)(b) down the back his right leg and up the front of his leg. PO Palleschi touches the front of § 87(2)(b) hip and waist area above his clothing.

Sgt. Rodriguez stated (Board Review 23) he was the patrol supervisor and the only supervisor who arrived at the incident location. He and PO Palleschi received a radio call for a burglary in progress with a description of an individual, but at the time of his interview he did not recall what the description was. The name of the 9-1-1 caller and their call back number was provided to Sgt. Rodriguez. Sgt. Rodriguez did not recall whether there was any information regarding weapons. Upon responding to the incident location multiple officers were on scene and on the ground with § 87(2)(b) matched the description of the individual who was the suspect of the burglary on the 9-1-1 call. Due to the matching description, Sgt. Rodriguez determined § 87(2)(b) to be under arrest for suspicion of burglary. § 87(2)(b) was placed in handcuffs. Sgt. Rodriguez and PO Palleschi lifted § 87(2)(b) from the ground and walked him to the side of a patrol vehicle. § 87(2)(b) leaned against the patrol vehicle. Sgt. Rodriguez and PO Palleschi searched § 87(2)(b) from his shoulders to his ankles for weapons prior to being placed in the patrol vehicle. Sgt. Rodriguez did not recall whether he placed his hands inside § 87(2)(b) pants pockets. Sgt. Rodriguez did not recall where PO Palleschi touched § 87(2)(b). At the time of the search, § 87(2)(b) was under arrest for suspected burglary and resisting arrest.

PO Palleschi stated (Board Reviews 24) that he was on patrol with Sgt. Rodriguez when they received a radio call for a burglary at § 87(2)(b) in Brooklyn which was a private residence. PO Palleschi did not recall any additional information regarding the job. There was a description of the suspect provided, but at the time of the CCRB interview he did not recall what it was. PO Palleschi did not know who the 9-1-1 caller was prior to arriving on scene nor did PO Palleschi recall whether the caller provided a name. PO Palleschi did not recall whether the individual was suspected of having a weapon. Upon arriving, there were multiple police officers with § 87(2)(b) on the ground. Because § 87(2)(b) was on the ground with police officers in front of the location of the 9-1-1 call, PO Palleschi believed it to be in connection to the burglary call. PO Palleschi did not recall whether § 87(2)(b) matched the description of the suspected individual in the 9-1-1 call. After being placed in handcuffs and stood up, § 87(2)(b) was placed in a patrol vehicle. PO Palleschi did not recall searching § 87(2)(b) or any other officer having done so. PO Palleschi explained that searches of individuals are performed prior to placing them into patrol vehicles.

At the time Sgt. Rodriguez and PO Palleschi conducted the search of § 87(2)(b) the female caller's name and callback number was known to the NYPD, the pedigree description and description of the clothing worn by the burglary suspect matched that of § 87(2)(b) and the initial 9-1-1 call was temporally and spatially proximal to the arrival of the police.

According to People v. Herold, 282 A.D.2d 1 (Board Review 33), to establish probable cause that would justify a search of an individual based on an informant's information, the information provided must pass the Aguilar-Spinelli which has two prongs: the reliability of the informant, and the basis of their knowledge.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (U) Force: Sergeant Thomas Rodriguez used physical force against § 87(2)(b)

Allegation (V) Force: Police Officer Jack Palleschi used physical force against § 87(2)(b)

§ 87(2)(b) stated (Board Review 21) that one male officer walked him to a patrol vehicle. § 87(2)(b) was not able to provide any additional pedigree information. The rear door was opened, and § 87(2)(b) was trying to get into the vehicle with his back first. He was not doing anything else with his body other than trying to sit in the patrol vehicle. § 87(2)(b) was having trouble getting into the patrol vehicle because the handcuffs were tight. He told the officer that the handcuffs were too tight, and he could not get inside the vehicle. The officer told § 87(2)(b) “Get in, get in. You think you’re a tough guy?” The officer swung his first in an upward motion and punched § 87(2)(b) once in the stomach. § 87(2)(b) leaned backward into the vehicle.

§ 87(2)(b) stated (Board Review 25) that PO Palleschi walked § 87(2)(b) to a patrol vehicle. At the rear seat door, PO Palleschi punched § 87(2)(b) once in the stomach and § 87(2)(b) kicked out with his legs toward PO Palleschi. § 87(2)(b) was laid on his back in the vehicle.

PO Palleschi stated (Board Review 24) that he walked § 87(2)(b) to a vehicle but did not have an independent recollection of who assisted him. At the vehicle door, § 87(2)(b) leaned the upper left side of his body into the vehicle so that his feet remained outside the vehicle. § 87(2)(b) leaned his upper body into the seat and used his legs to kick toward the officers at the open door. PO Palleschi was kicked in the throat. He did not believe that any other officer was struck. PO Palleschi pushed on § 87(2)(b) upper arm and bicep area so that he was prone on the rear vehicle seats. PO Palleschi did not use any additional force to get § 87(2)(b) into the vehicle. PO Palleschi did not believe an officer punched § 87(2)(b) in the stomach and denied he did so. PO Palleschi denied striking § 87(2)(b) at any point during the incident.

Sgt. Rodriguez stated (Board Review 23) that he and PO Palleschi walked § 87(2)(b) to a patrol vehicle. The rear passenger door was opened. Sgt. Rodriguez and PO Palleschi placed their hands on § 87(2)(b) shoulders and upper body and put pressure on him to enter the vehicle. § 87(2)(b) resisted and did not move into the vehicle. Sgt. Rodriguez and PO Palleschi put additional pressure on § 87(2)(b) upper body and he leaned his torso into the vehicle. § 87(2)(b) kicked out toward Sgt. Rodriguez and PO Palleschi. § 87(2)(b) struck Sgt. Rodriguez on his arm, bicep and chest. PO Palleschi was struck as well but Sgt. Rodriguez did not know where. Sgt. Rodriguez and PO Palleschi continued pushing on § 87(2)(b) until he was fully in the patrol vehicle. Sgt. Rodriguez denied he punched the male in the stomach, and he did not observe PO Palleschi do so.

Starting at internal timestamp 5:20:47 p.m. in PO Figueroa’s BWC (Board Review 03) PO Palleschi and Sgt. Rodriguez walk § 87(2)(b) to the rear door of a patrol vehicle. PO Figueroa stands behind PO Palleschi and Sgt. Rodriguez. PO Palleschi and Sgt. Rodriguez appear to struggle briefly with § 87(2)(b) is seated in the vehicle and the door is closed.

Upon review of the multiple BWC, the only two officers present with § 87(2)(b) at rear door of the vehicle were PO Palleschi and Sgt. Rodriguez. No other BWC video captured PO Palleschi and

Sgt. Rodriguez as they were placing § 87(2)(b) into the vehicle. Due to where PO Figueroa was standing, while PO Palleschi and Sgt. Rodriguez appear to struggle with putting § 87(2)(b) in the vehicle, neither of their arms can be seen. From the back, it does not appear as though either PO Palleschi or Sgt. Rodriguez moved their body indicating they punched § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

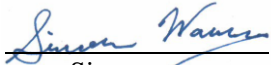
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 29).
- PO Brunner has been a member of service for five years and has been a subject in one prior CCRB complaints and one allegations, none of which were substantiated. CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Wu has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Palleschi has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Gourlay has been a member of service for eight years and has been a subject in two prior CCRB complaints and five allegations, none of which were substantiated. CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Leonard has been a member of service for four years and has been a subject in two prior CCRB complaints and three allegations, none of which were substantiated. CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Figueroa has been a member of service for two years and this is the first CCRB complaint to which she has been a subject.
- PO Feratovic has been a member of service for five years and this is the first CCRB complaint to which he has been a subject.
- PO Goldin has been a member of service for ten years and has been a subject in one prior CCRB complaints and two allegations, none of which were substantiated. CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Raff has been a member of service for two years and this is the first CCRB complaint to which she has been a subject.
- Sgt. Rodriguez has been a member of service for 12 years and has been a subject in one prior CCRB complaints and one allegations, which was not substantiated. CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Hewitt has been a member of service for 22 years and has been a subject in eight prior CCRB complaints and 17 allegations, of which one was substantiated:
 - CCRB #201214768 substantiated allegations of Discourtesy against PO Hewitt. The Board recommended charges and the NYPD imposed three forfeited vacation days.
 - CCRB history does not reflect any apparent pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
 - According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 30).
 - As of February 13, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 31).
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Squad No. 15

Investigator:	<u>Valentina Concha-Toro</u>	<u>Inv. Valentina Concha-Toro</u>	<u>June 25, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u></u>	<u>IM Simon Wang</u>	<u>06/25/21</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date